

REMARKS/ARGUMENTS

I. STATUS OF THE PENDING CLAIMS

Claims 10-29 are pending in the application, all finally rejected.

II. REJECTION UNDER 35 U.S.C. § 101

The claims, pending for over four years, have been rejected as directed to unpatentable subject matter. No reasoning has been provided as to why, after this substantial pendency, the claims have suddenly given rise to a rejection on this basis. The rejection lacks merit, as discussed in greater detail below.

This is a “technological arts” rejection: Its premise, for which no legal authority is provided, is that “each of the steps could be done without any *technology involvement*.” (Office Action at 2, emphasis added). In the Examiner’s view, the possibility of human involvement removes “technology” from the invention. This curious conclusion – which essentially imposes a sort of automation requirement – is clearly erroneous.

This error has recently been acknowledged by the U.S. Patent and Trademark Office. The rejection now stands overruled by recent controlling precedent of the Board of Patent Appeals and Interferences. In a ruling that is binding on the USPTO, the BPAI has opined that “there is currently no judicially recognized separate ‘technological arts’ test to determine patent eligible subject matter under § 101.” *Ex Parte Lundgren*, Appeal No. 2003-2088, Slip Op. at 9 (BPAI 2005). Pursuant to the BPAI’s Standard Operating Procedure 2, the opinion has been designated as precedential. (*Id.* at 1).

The ground of rejection having been overruled, Applicant respectfully requests that the rejection be withdrawn.

II. REJECTION UNDER 35 U.S.C. § 102

All of pending claims 10-29 were successfully amended to distinguish the art previously applied against the claims, but now withdrawn.

Despite the successful amendment, the claims stand again rejected, this time under 35 USC Sec. 102(e) over U.S. Patent No. 6,266,416 to Sigbjørnsen , a reference that was available when the original search and examination were conducted.

A. Overview

Sigbjørnsen in no way discloses or suggest the invention as claimed. In particular, Sigbjørnsen fails to disclose, in any fashion, any of the following limitations:

- (i) accessing a unique hardware identification code associated with a computer system;
- (ii) accessing the unique hardware identification code from a portion of a data medium that is readable but not writeable;
- (iii) generating an identification number from the hardware identification code and accessed license information for the software component;
- (iv) transmitting the resulting identification number to the computer system associated with the unique hardware identification code; or
- (v) authorization to use the software component is allowed for the computer system associated with the computer-readable data medium (from which the unique hardware identification code is accessed) and not allowed for a second computer system not associated with the computer-readable data medium having the unique identification code.

Some or all of these limitations, none of which Sigbjørnsen discloses or suggests, are called for directly or indirectly by all of the pending claims. Sigbjørnsen simply does not

address the problem of authorizing the use of software with particular, uniquely identified hardware and, for that reason, does not disclose any of the foregoing limitations.

As explained more fully below, the Examiner has not carried the heavy burden of proving that each element of each claim has been identically shown by the applied prior art reference.

B. Claims 10-24

Claims 10-24 directly or indirectly recite all of the limitations set forth in section A above, among others. Sigbjørnsen discloses or suggests none of these limitations. The Examiner has failed to carry his burden under 35 U.S.C. § 102. For this reason, the rejection of claims 10-24 should be withdrawn.

i. Claim 12

Claim 12 recites that a plurality of identification numbers can be generated for one hardware identification code. The Examiner contends this is shown by Sigbjørnsen, but provides no citation to support this contention. In fact, as discussed above, Sigbjørnsen discloses nothing whatever about hardware identification codes, nor does it suggest any. Claim 12 is therefore patentable over the art of record.

ii. Claim 13

Claim 13 recites that at least one identification number is stored in a readable and writeable area of the data medium. This is said to be disclosed at col. 1, lines 34-40 of Sigbjørnsen, but that passage does not actually disclose this limitation. No mention is made, in this passage, of writing data. Claim 3 is therefore patentable over the art of record.

iii. Claim 16

Claim 16 recites that the data medium, on which the unique hardware identification code is stored, comprises a component of the computer system. This is said to be disclosed by Sigbjørnsen at column 5, lines 30-35. That passage simply refers, however, to a card reader

being an external unit to a computer. Any data relating to software authorization (which does not include any hardware identification, as required) is on a Smart Card. A Smart Card is not a component of the computer system. To the contrary, this disclosure positively teaches away from the claimed invention. Claim 16 is therefore patentable over the art of record.

iv. Claim 18

Claim 18 recites that the data medium comprises a multimedia card. The passages cited by the Examiner neither disclose nor suggest this feature. Claim 18 is therefore submitted to be allowable over the art of record.

C. Claims 25, 26, 27 28 and 29

Claims 25, 26, 27, 28 and 29 all recited, directly or indirectly, the features recited in Section A above. As discussed, none of those features is disclosed, or even suggested, by the SigbjørnSEN reference. Again, that reference does not contemplate use of unique hardware identification code accessed from an associated computer readable data medium, much less generating an identification number from the hardware identification code and license information, or providing authorization to use a software component associated with that computer-readable data medium. The claims, therefore, all recite patentable subject matter.

III. CONCLUSION

Claims 10-29 are pending in the application. Applicants submit that all of the pending claims, for the reasons set forth above, recite patentable subject matter and are now in condition for allowance. Reconsideration and allowance are therefore respectfully requested.

Other than as specified in the first paragraph of this communication, no fee is believed to be due in connection with this communication. However, if such additional fee is required, the Commissioner is authorized to charge the fee to Deposit Account No. 23-1703.

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Respectfully submitted,



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